

Appeal from a decision of the Director, Minerals Management Service, affirming a decision of the Regional Supervisor, Production and Development, Gulf of Mexico Outer Continental Shelf Region, denying Chevron U.S.A., Inc.'s application for suspension of operations on Lease No. OCS-G 7271. MMS 87-0170-OCS.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Suspensions--Outer Continental Shelf Lands Act: Generally--Outer Continental Shelf Lands Act: Oil and Gas Leases

An application for suspension of an Outer Continental Shelf oil and gas lease made pursuant to Minerals Management Service Release No. 86-12 will properly be denied if the party seeking the suspension is not the designated operator and the application has not been filed by all lessees. Suspensions pursuant to that release were to be granted only upon a showing of both an inability to obtain the necessary NPDES permits during the period between June 30, 1984, and July 2, 1986, and a showing that the delay in exploration activities was a result of this inability. The application required that the applicant attest to this fact, and absent a joint attestation by all lessees, the only party able to attest to these facts is the operator.

APPEARANCES: Melanie Miller Lewis, Esq., M. Hampton Carver, Esq., J. Clifford Rogillio, Esq., Murray A. Calhoun, Esq., and Ronald C. Fiore, Esq., New Orleans, Louisiana, for Chevron U.S.A., Inc.; Lawrence R. Hoese, Esq., U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Chevron U.S.A., Inc. (Chevron), has appealed from a July 30, 1987, decision of the Director, Minerals Management Service (MMS), affirming a February 18, 1987, decision of the Regional Supervisor, Production and

Development, Gulf of Mexico Outer Continental Shelf Region, denying Chevron's application for suspension of operations on mineral lease No. OCS-G 7271, High Island Area, Block 71. 1/

Lease No. OCS-G 7271 was issued for a 5-year term effective September 1, 1984. The leased lands consist of the W\, NE^, Block 71, High Island Area, OCS Leasing Map, Texas Map No. 7, and the named lessees are Chevron (35-percent interest), Phillips Petroleum Company (Phillips) (35-percent interest), and SONAT Exploration Company (Sonat) (30-percent interest).

On August 3 and 9, 1984, Phillips and Chevron signed Designation of Operator forms (Form 9-1123), designating Sonat as the "operator" with respect to the lands described in Lease No. OCS-G 7271. The file does not indicate when the designation forms were received by MMS, but the Phillips designation form indicates it was posted on March 10, 1985. There has been no drilling on the leased lands.

Effective November 19, 1986, MMS issued Release No. 86-12, Notice to Lessees and Operators of Federal Oil and Gas Leases in the Outer Continental Shelf, Gulf of Mexico OCS Region. The stated purpose of the notice was to give guidelines for applications for suspension of operations for undrilled leases issued between June 30, 1984, and January 2, 1986, if the lessees' exploratory drilling programs were delayed as a result of the inability to acquire National Pollution Discharge Elimination System (NPDES) permits. This release was issued because NPDES permits could not be issued for that purpose between June 30, 1984, and July 2, 1986, the effective date of general NPDES permit No. GMG280000.

The procedures for applying for suspension of operations and information to be submitted with the application were set out in the release:

1. Applications are to be submitted by the lessee to the Gulf of Mexico OCS Regional Supervisor for Development and Production (RS/DP) who will make a determination with respect to the requested [suspension of operations]. The RS/DP will forward his decision to the applicant. If the proposal is disapproved by the RS/DP, the reasons for disapproval will be transmitted to the applicant.

2. An application submitted for [a suspension of operations] under the provisions outlined in this [notice to lessees] should contain the following:

- (a) Name(s) of the title holder(s) of record.

- (b) A description of the area covered by the lease including the lease number.

1/ On June 3, 1988, the parties filed a joint motion requesting expedition of this case, and it has been expedited.

(c) A statement executed by an authorized corporate official which reads as follows:

I certify that our inability to obtain required NPDES discharge permits from the Environmental Protection Agency between June 30, 1984, and July 2, 1986, resulted in the delay of our exploratory drilling activities on Lease _____.
(insert Lease No.)

MMS Release No. 86-12 at 1-2.

On January 14, 1987, Chevron filed an application for suspension of Lease No. OCS-G 7271, containing the information called for in MMS Release No. 86-12, and signed by Chevron's Assistant Secretary. On February 28, 1987, the Acting Regional Supervisor, Production and Development, notified Chevron that its application had been disapproved. The stated reason for disapproval was:

Our records indicate that Sonat Exploration Company has always been the designated operator of record for Lease OCS-G 7271. However, Sonat has not certified that its operations have been delayed by the inability to obtain a required NPDES discharge permit. Since we have not received this certification from Sonat, your application is incomplete, therefore we are unable to approve your request for [a suspension of operations].

On March 20, 1987, Chevron filed an appeal to the Director, MMS, pursuant to 30 CFR 290.3. The reasons for appeal will be discussed in greater detail below, but are generally based upon Chevron's contention that "[i]t is the lessee whose rights are maintained by [a suspension of operations] and so it is the lessee who should be permitted to apply for the [suspension of operations]" (Statement of Reasons to the Director, MMS, at 5).

On July 30, 1987, the Director, MMS, issued a decision affirming the February 28, 1987, decision. He noted that neither the regulations nor Release No. 86-12 explicitly require that an application for suspension of operations be filed by the operator. However, he found that when a designation of operator has been approved, the designated operator acts on behalf of all lessees with respect to operational matters. On this basis, the Director held that, in order to gain a suspension of operations for Lease No. OCS-G 7271, Sonat must file an application for suspension.

Chevron filed a timely appeal to this Board from the Director's decision. In its statement of reasons, Chevron argues that it met all of the requirements of 30 CFR 250.12 and Release No. 86-12 when it filed the application for suspension of operations; that 30 CFR 250.12(b)(1) and the release both require that the application be filed by a lessee; and there are no requirements that the application be filed by the operator. Chevron further argues that section 5 of the Outer Continental Shelf Lands Act, 43 U.S.C. | 1334 (1982), similarly provides for a grant of a suspension of operations at the request of a lessee. Chevron notes the definition of "lessee" and

"operator" at 30 CFR 250.2(z) and 30 CFR 250.2(gg) respectively, arguing that a regulation which expressly permits a lessee to apply for a suspension of operations cannot reasonably be applied to require that an application for a suspension of operations be filed only by the operator. Appellant states that

[t]he main reason that a party applies for [a suspension of operations] is to extend the primary term of the lease to which the application pertains. The rights granted by a mineral lease belong to the lessee, not the operator. It is the lessee whose rights are maintained by [a suspension of operations] and so it is the lessee who should be permitted to apply for the [suspension of operations].

(Statement of Reasons at 5).

In its response to the Director's determination that "once an operator has been designated, the [MMS] looks to such operator as regards operational matters; and such operator acts on behalf of all lessees with respect to operational matters," Chevron states that the designation of an operator would not excuse Chevron from performing obligations imposed upon it as a mineral lessee, and Chevron cannot be deprived of its rights simply because it has designated another as an operator. Chevron argues that such designation does not preclude Chevron, as a principal from acting on its own behalf. Chevron notes the Director's comment that "[a]ny other rule would create chaos," and submits that there is no evidence that the approval of Chevron's application would do so. Chevron states that the grant of the suspension would be in the best interest of all parties, and none of the co-lessees have objected.

As its final argument, Chevron argues that there is no established procedure specifically stating that an application for suspension of operations must be filed by the operator, and that in order to impose this requirement, the procedure must be published in the Federal Register. In furtherance of this argument, Chevron argues that having published procedures under which a lessee is entitled to apply for a suspension of operations, the Director is bound by those procedures.

A response to the Statement of Reasons has been filed on behalf of MMS. MMS urges this Board to find that the Director, MMS, was correct in finding that Chevron was not authorized to seek a suspension of operations for Lease No. OCS-G 7271. MMS argues that Sonat, not Chevron, was authorized to file an application for suspension of operations on behalf of the co-lessees. MMS notes that 30 CFR 250.31 provides that the designated operator is authorized to act on behalf of the other lessees and that Sonat neither filed an application nor made the requisite certification concerning delays caused by failure to obtain an NPDES permit.

With this background we turn to the Designation of Operator forms executed by Chevron and Phillips. By designating Sonat as the operator,

Chevron and Phillips designated Sonat as their local agent, with full authority to act on their behalf in complying with the terms of the lease and regulations applicable thereto. Thus Sonat was responsible for obtaining the NPDES permits on behalf of the co-lessees.

Section 5 of the Outer Continental Shelf Lands Act, 43 U.S.C. | 1334 (1982), provides for suspension of operations and directs the Secretary to promulgate regulations in furtherance of the Act. The regulatory provisions pertaining to suspension of operations are found at 30 CFR 250.12. This regulation sets out the conditions under which the lease may be suspended. The regulation clearly allows for discretionary authority to suspend operations and does not require suspension for the reasons stated in Release No. 86-12.

In its release, MMS advised lessees of the conditions under which it would exercise the discretionary authority to suspend operations. The grant of a suspension of operations pursuant to Release No. 86-12 requires a showing of both an inability to obtain the necessary permits and a showing that the delay in exploration activities was a result of this inability. Chevron is correct when saying that the designation of Sonat as the operator did not relieve Chevron or Phillips of their lease obligations. The designation did, however, vest Sonat with certain rights and obligations. One of those obligations was to act on behalf of its co-lessees, by obtaining the permits necessary for the conduct of the operations contemplated by the lease.

Release No. 86-12 did not specifically state that the application for suspension of operations must be filed by the operator. However, the language was sufficiently specific to put a party desiring to apply for a suspension of operations pursuant to that release on notice that necessary certification must be made by the party who had actually been delayed by the inability to obtain the necessary NPDES permit. Sonat was the designated operator, and would be the party whose drilling operations were delayed by an inability to gain the necessary permits. Therefore, Sonat was the only party able to certify that it was unable to obtain required NPDES discharge permits from the Environmental Protection Agency between June 30, 1984, and July 2, 1986, and that this inability resulted in the delay of exploratory drilling activities on Lease No. OCS-G 7271. Chevron could not certify that Sonat's inability to obtain the necessary permits resulted in Sonat's inability to do the necessary exploratory drilling.

In addition, Sonat remains the designated operator. As designated operator, Sonat acts on behalf of its co-lessees unless and until the designation is terminated. 30 CFR 250.31. We recognize that the grant of a suspension would probably benefit all co-lessees. However, neither Phillips nor Sonat joined Chevron in seeking a suspension. Not being the designated operator, Chevron cannot act on behalf of its co-lessees, and could not bind them to the obligation to pay annual rentals during the period of suspension. Thus, an application for suspension pursuant to Release No. 86-12 must be filed either by the operator or jointly by all lessees. The application was properly denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Kathryn A. Lynn
Administrative Judge
Alternate Member